

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CECILIA SILVA,

Plaintiff,

VS.

HOME DEPOT USA, INC.,

Defendant.

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CIVIL ACTION NO. 5:17-CV-00174

PLAINTIFF'S ORIGINAL COMPLAINT

This is a suit for damages brought by CECILIA SILVA, Plaintiff, against HOME DEPOT USA, INC., Defendant, on the following grounds:

Parties, Jurisdiction, and Venue

1. Plaintiff, CECILIA SILVA, is a natural person who resides in Comal County, Texas.

2. Defendant, HOME DEPOT USA, INC., is a Delaware corporation that maintains its principal place of business in Atlanta, Georgia. This Defendant may be served with process by serving its registered agent for service in Texas, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

3. There is complete diversity of citizenship between Plaintiff and Defendant. The subject matter of the claim exceeds the sum or value of \$75,000, exclusive of interest and costs. Accordingly, this court has original jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332.

4. Defendant is subject to the Court's personal jurisdiction in the Western District of Texas, San Antonio Division because it this is the district and division in which all or a substantial part of the events or omissions giving rise to Plaintiff's claim occurred.

Factual Background

5. On or about March 7, 2015, Plaintiff was visiting the Home Depot store on Interstate 35 in New Braunfels, Texas. Defendant was the owner or occupier of the premises in question. While walking through the garden area of Defendant's store, Plaintiff tripped on a piece of clear plastic wrap that was lying on the floor next to a pallet. As a result of the fall, Plaintiff suffered serious injuries, including fractures of both elbows.

First Cause of Action: Premises Liability

6. At the times material to this action, Plaintiff was an invitee of Defendant. Defendant was in possession or control of the premises at the time of the incident in question. The plastic wrap upon which Plaintiff tripped constituted an unreasonably dangerous condition of which Defendant knew or should have known. Defendant failed to warn Plaintiff of the dangerous condition that caused her fall, failed to correct the dangerous condition, failed to use proper safety equipment or materials to minimize the danger to Plaintiff, and failed to inspect the premises to discover the dangerous condition. As a result of these failures on the part of Defendant, Plaintiff suffered serious personal injuries.

Damages

7. As a result of the actions of Defendant described above, Plaintiff has incurred, and will incur in the future, damages for medical expenses, lost wages and loss of wage-earning capacity, physical pain and mental anguish, permanent and temporary impairment, and

disfigurement. Plaintiff seeks an award of these damages in an amount to exceed the minimum jurisdictional limits of this Court.

Jury Demand

8. Plaintiffs demand trial by jury.

Prayer for Relief

WHEREFORE, Plaintiff prays that Defendant be cited and appear herein, for an early trial by jury, and upon trial, judgment for the following:

- a. actual damages in an amount to exceed the minimum jurisdictional limits of this Court;
- b. pre-judgment and post-judgment interest at the highest rates allowed by law;
- c. costs of court; and
- d. general relief.

Respectfully submitted,

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